THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.26921 OF 1999

ORDER: (Per TCSR,J)

The instant writ petition is directed against the Judgment dated 01.09.1999 passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, Hyderabad, in L.G.C. No.254 of 1995 seeking a writ of certiorari to declare the impugned Judgment as illegal and without jurisdiction.

The unsuccessful first respondent in the land grabbing case is the first writ petitioner. The petitioners 2 and 3 herein purchased the land in dispute under a registered sale deed dated 22.01.1999 during the pendency of the L.G.C from the first petitioner. The second respondent herein filed the L.G.C. No.254 of 1995. The first petitioner and the second respondent herein are the members of the third respondent Society.

The facts lie in a narrow compass. The first petitioner was allotted plot No.392 by the third respondent society and the second respondent was allotted plot No.378 under allotment letter 06.04.1995 ad measuring 2102 square yards. Having noticed that the first petitioner was constructing stone masonry retaining wall allegedly encroaching into the plot No.378 of the second respondent, the second respondent addressed a letter dated 31.07.1995 to the society requesting it to fix the boundaries of plot No.378 of the second respondent. The Engineers of the Society inspected the plot No.378 and found a stone masonry retaining wall and the first petitioner completed the construction knowing fully well that a part of the land

belonged to the second respondent was encroached despite the protests with a view to cause wrongful loss to her. The police report given by the second respondent was not investigated into. Hence she filed L.G.C.No.254 of 1995.

That application was resisted by the first petitioner. The case of the first petitioner was that the second respondent having filed a suit O.S.No.160 of 1995 on the file of the I Additional Judge, City Civil Court, Hyderabad, against her seeking the very same reliefs, could not maintain two parallel proceedings – one in the Civil Court and the other in the Special Court. The land grabbing case being subsequent to the civil suit filed by her was liable to be stayed under Section 10 of the Code of Civil Procedure. It was the further case of the first petitioner that she purchased plot No.392 ad measuring 1347 square yards with boundaries as mentioned *inter alia* in the sale deed dated 04.01.1995. As could be seen from the boundaries, plot No.378 did not abut plot No.392 at all on any side. When she started constructing the compound wall after getting the site leveled up and after obtaining the necessary permission from the Municipal Corporation of Hyderabad for construction of a house, at that stage the second respondent-applicant came forward with a false plea that an extent of 200 square yards in plot No.378 was encroached upon by her. In fact, there is a green belt area in between the plot Nos.392 and 378 and they did not abut each other. As a matter of that, the actual area in the possession of the first petitioner is far less than 1347 square yards purchased by her and, therefore, the question of her occupying or grabbing any part of the land from the adjacent plot No.378 would not arise. While Plot No.378 is in Road No.10, plot No.392 is in Road No.22. If for any reason, the Court comes to the conclusion that on account of the faulty execution of the lay out by the society there is overlapping of area, still the rights of the first petitioner deserved to be protected as she is a *bona fide* purchaser for value having already started construction in the plot purchased by her under a registered sale deed while the second

respondent applicant did not even obtain a registered sale deed for her plot on the date of filing of the land grabbing case. The first petitioner denied the allegation of grabbing.

The third respondent society filed a counter supporting the case of the second respondent applicant. It sought to explain that the two plots No.378 and 392 abut each other inasmuch as subsequently the entire space existed in between those plots too were allotted to neighbouring plot owners by the society and thus an additional area of 902 square yards came to be added to plot No.378 and 147 square yards came to be added to plot No.392 and thus both the plots were enlarged and on account of their enlargement, they came to abut each other.

Basing on the above pleading, the learned Special Court framed the following issues for trial:

(1) Whether the applicant is the owner of the application schedule property?
(2) Whether the respondent No.1 is a land grabber within the meaning of Act XII of 1982?
(3) To what relief?

At the time of trial, applicant examined herself as P.W.1 and got Exs.A.1 to A.8 marked. The contesting respondent, who is the first petitioner herein, got herself examined as R.W.1 and Exs.B.1 to B.17 were got marked. The Commissioner appointed by the Special Court and the Inspector of Survey and Land Record who accompanied the Commissioner were examined as C.Ws.1 and 2 respectively.

Appreciating the evidence thus adduced on either side, the learned Special Court was of the view that plot Nos.378 and 392 abut each other and that the first respondent, who is the first petitioner herein, would answer the description of land grabber. Consequently, the application was allowed directing the first respondent (first petitioner herein) to remove the encroachment in an extent of 200 square yards. Assailing the said Judgment, as aforesaid, the instant writ petition has been filed.

Sri Vilas V.Afzulpurkar, learned senior counsel appearing for the writ petitioners, represents that the learned Special Court committed illegality in having concluded that the first petitioner herein encroached upon an area of 200 square yards in plot No.378 without localizing the plot No.392. He further represents that in fact if plot No.392 is properly localized, it falls short of the area in fact purchased under the registered sale deed by the first petitioner from the society and, therefore, the question of encroaching upon any extent of land in plot No.378 would not arise at all. Finally, the learned senior counsel represents that at any rate, having regard to the facts and circumstances of the case, the writ petitioners cannot be termed as land grabbers.

The third respondent society appeared through its counsel in the writ petition and filed a letter dated 12.08.2003 supporting the case of the writ petitioners.

Sri B.Vijayasen Reddy, learned counsel appearing for the second respondent applicant, on the other hand, would contend that the report of the Commissioner would amply show the encroachment and that there has been any amount of collusion in between the society and the writ petitioners so as to cause loss to the second respondent.

In view of the rival contentions, the points that arise for our determination are:

(1) Whether in fact the first petitioner encroached upon 200 square yards of land in plot No.378? and
(2) Whether the first petitioner is a land grabber?

Admittedly, the first petitioner and the second respondent herein are the members of the Jubilee Hills House Building Co-operative Society, the third respondent herein. Both of them were allotted plot Nos.392 and 378 respectively. The first petitioner purchased the said plot under a registered sale deed dated 04.01.1995. By the time the land grabbing case came to be filed, there had been no registered sale

deed in favour of the second respondent. But obviously, the sale deed came to be registered in her favour by the society during the pendency of the proceedings on 31-07-1996 under the original of Ex.A7. Initially, the area covered by plot Nos.378 and 392 was 1200 square yards each. There used to be a space in between these two plots known as green belt which was subsequently divided and allotted to the respective plot holders of 378 and 392. Thus, an additional area of 902 square yards was added to plot No.378 and 147 square yards was added to plot No.392 as per the case of the third respondent society. While the first petitioner denied specifically the case of the second respondent that both the plots abut each other, the third respondent society sought to explain that they abut each other on account of the subsequent addition of areas to both the plots as afore said. While, it is the specific case of the second respondent applicant that an area of 200 square yards was grabbed by the first petitioner while constructing a stone masonry retaining wall, it is the specific case of the first petitioner that in fact the existing extent of plot No.392 falls short of the area purchased under a registered sale deed from the Society and, therefore, the question of the first petitioner encroaching upon a part of the site in plot No.378 would not arise at all. That in fact becomes the core contentious issue in between the parties *inter se*.

The suit, O.S.1160 of 1995, filed by the second respondent was withdrawn after filing the instant land grabbing case and consequently was dismissed. The plea of the first petitioner that the second respondent cannot be permitted to continue two parallel proceedings is not germane on account of the said subsequent development.

The case of the society seems to be that the plot No.378 was originally allotted to one, Mrs.Urmila Katakam under membership No.2905. The said Urmila Katakam transferred plot No.378 and her membership to one, V.S.Datta, who in turn transferred his membership and plot to the second respondent. The transfer seems to have been

approved by the society on 21-03-1995 under Ex.A1 proceedings, dated 06-04-1995. Even by the date of transfer of the membership and the allotment of plot to the second respondent, her case seems to be that the area of plot No.378 was 2102 square yards. However, Ex.B8 sale deed executed by the third respondent society in favour of the first petitioner was on 04-01-1995, which was obviously earlier to Ex.A1 proceedings, dated 06-04-1995, whereunder the society approved the transfer of membership and the plot in favour of the second respondent by V.S.Datta. The sale deed in favour of the second respondent admittedly came to be executed on 31-07-1996 when the L.G.C. was pending before the Special Court.

Title passes obviously only when the requisite conveyance deed in writing is executed by the vendor in favour of the vendee as per the mandate contained in Section 54 of the Transfer of Property Act. The allotment of plot in favour of the members of the society obviously cannot pass the necessary title in their favour. In the event of any inconsistency between the allotted land and the land conveyed later by means of a registered sale deed, undoubtedly the recitals in the sale deed would prevail than recitals contained in the earlier allotment letter. Admittedly, the sale in favour of the first petitioner is antecedent to the sale in favour of the second respondent. Above all, the sale in favour of the second respondent was during the pendency of the Land Grabbing Case. One shall not at this juncture be oblivious of the fact that litigation in between the parties *inter se* by the date of the sale in favour of the second respondent had already been commenced and the third respondent society had taken the stand *inter alia* in the counter filed by supporting the case of the second respondent qua the case of the first petitioner. Initial allotment in favour of the first petitioner and the second respondent was obviously in respect of the plots measuring 1200 square yards each. Subsequent addition of the green belt area that used to exist in between these two plots in favour of the first petitioner and the second

respondent seems to have not been covered by the sale deed executed in favour of the first petitioner. In the event of any conflict about the actual extents of the plot Nos.378 and 392, since the title passed in favour of the petitioner from the society earlier to the title passed in favour of the second respondent, the sale deed in favour of the first petitioner prevails and the society could not have conveyed a better title than what it had by then having already sold the plot No.392 covered by the boundaries specified *inter alia* in the sale deed in favour of the first petitioner. This crucial aspect has not been considered by the learned Special Court in its judgment. Ignoring all these aspects, going by the stand taken by the society and the contention of the counsel of the society, eventually the learned Special Court came to the conclusion that since additional areas came to be added to plot Nos.378 and 392, the applicant is able to prove that the area of plot No.378 is 1200 square yards and the area of plot No.392 was 1347 square yards and that plot No.392 abuts plot No.378. Now that there has been no dispute about the subsequent allotment of the area that used to exist in between plot Nos.378 and 392, it is not germane as to what exactly is the area of each plot. The crucial point seems to be what was conveyed to the first petitioner and to the second respondent respectively under regular sale deeds by the society. In that view of the matter, much significance need not be attached to the oral evidence of P.W.1 and R.W.1, who are the rival claimants. The evidence of C.Ws.1 and 2 is germane to some extent. The Commissioner was obviously appointed to measure and demarcate plot No.378 and to know its physical features and structures, if any, thereon. The request of the first petitioner in I.A.No.851 of 1998 to localise the plot No.392 was not considered by the learned Special Court and eventually the dismissal order passed by the learned Special Court was affirmed by this Court in the Writ Petition No.14631 of 1996. As discussed hereinabove, in the event of conflict between the two sale deeds executed in favour of the first

petitioner and in favour of the second respondent by the third respondent society which sale deed prevails has obviously been lost sight of by the learned Special Court.

The lay out prepared initially by the society dividing the plots measuring various and varied extents is one aspect and when a dispute arises about the exact extent covered by the plots thus divided is altogether a different aspect. One cannot go by the assumption that the extents of various plots as divided under the lay out prepared by the society are accurate. In that view of the matter, when the first petitioner requested the Special Court to localize her plot also to see whether she is within the limits of the plot allotted to her and conveyed by means of registered sale deed, which sale deed is obviously antecedent to the sale deed of the second respondent, her request should have been acceded to by the Court. The reasoning assigned by the learned Special Court that it is not germane as to whether the area covered by the sale deed of the first petitioner is accurate or has fallen short of, but what is germane is whether the first petitioner has encroached upon a part of the plot allotted to the second respondent, under the circumstances, appears to be not sound.

From the record, it appears that the society addressed a letter, dated 07-09-1995, asking the first petitioner to remove the encroachment about 200 square yards from plot No.378 and that letter gains significance at this stage. It may be reiterated here that the society supported the case of the second respondent as can be seen from the stance of the society taken *inter alia* in the counter. The society got the plots 378 and 392 measured by itself and filed Ex.B2 memo together with a sketch Ex.B3 before the Special Court stating that the first petitioner had encroached into an extent of 200 square yards in plot No.378 by raising the compound wall as shown in Ex.B3 sketch. The learned Special Court seems to have been swayed by these two documents Exs.B2 and B3, oblivious of the fact that Ex.B2 and B3 in the first instance have not been proved by examining the

concerned Engineer, who got the two plots measured and secondly the society, which is the third respondent herein, which supported the version of the applicant and got the plots measured when there has already been a dispute commenced in between the first petitioner and the second respondent and more particularly during the pendency of the proceedings before the Special Court. The probative value of such documents is undoubtedly next to nil. Under those circumstances, that exercise, which claimed to have been done by the society during the pendency of the proceedings before the Special Court, should have been done by the learned Special Court through C.Ws.1 and 2. The request in that regard made by the first petitioner, unfortunately, was not considered by the Special Court. The report of the Commissioner, C.W.1, in Ex.A4 and A5, plan appended thereto cannot be considered, for the simple reason that they were prepared only by taking into consideration the measurements of plot No.378. According to this report, the first petitioner encroached into an extent of 216.9 square yards in plot No.378. C.W.1 in his evidence admitted that he did not demarcate plot No.392 as the warrant issued to him by the Court did not direct to measure plot No.392. C.W.2, the Inspector of Survey of Land Records, admitted in his evidence that the lay out plan prepared by the society is not properly drawn to scale. He further admitted in his cross-examination that generally to demarcate any plots the adjacent plots on all sides will be taken into consideration. He finally admitted at the end of his cross-examination that since he did not measure plot No.392, he could not state that there had been encroachment by the owner of plot No.392. The impact of the evidence of C.W.2 has not been considered by the learned Special Court, instead it has gone by the conclusion that it failed to find any reason whatsoever for the society to collude with the applicant i.e., the second respondent herein.

The society, appeared through its counsel before this Court. The counsel filed a letter, dated 12-08-2003, addressed by the Special

Officer of the Society to the owners of plots 388 to 392, 377, 378 and 379. In this letter *inter alia,* the boundaries, the measurements as per the approved lay out and the measurements as per the respective registered sale deeds and the site plan attached thereto and the measurements on ground have been mentioned clearly qua respective plots. As can be seen from this letter, there has been any amount of variance in the measurements as mentioned in the lay out as mentioned in the registered sale deeds and as exist on ground. At page 5 of this letter it has been mentioned at the end of para 1 as under:

"The net result is that for the plot No.392, the width left is 60'-0" though it should have 83'-0" as per lay out and as per registration."

In the last para of the letter it has been mentioned qua the plot No.378 as under:

"As plot No.378 was registered with the measurements in the year 1996 under sale deed being document No.2300/96, dated 31-07-1996, which was during pendency of the case, the right course for the Society should have been keeping their commitments in view to take specific measurements of the plot Nos.390, 390-A, 391 while registering the plot in favour of Smt.D.Vijaya and the sale deed should have been executed for the area which was available."

It is further mentioned as under:

"Some how, the sale deed in favour of Smt.D.Vijaya, oner of Plot No.378, was executed for 2102.0 square yards, which is much more than the Urban Land Ceiling Limit and also the original allotment of 1200 square yards."

Of course the value of this letter at this stage should also be considered. One thing appears to be true that, that there has been change in the stance of the society. Although the stand taken by the society is not quite germane for adjudicating the dispute *inter se* between the first petitioner and the second respondent, but unfortunately in the instant case the learned Special Court is swayed

very much by the stand taken by the society *inter alia* in its counter filed before the Special Court. In that view of the matter, the letter of the society filed through its counsel before this Court gains significance, but the same cannot be received as a piece of evidence in the Writ Petition and consequently not germane to refer the same as it is not legal evidence that has been filed before this Court.

For the above reasons, we are of the considered view that the Special Court committed an error in having refused the request of the first petitioner to direct the Commissioner to measure plot No.392 also and committed an error in having considered the memo filed by the society and the report of the Engineer, who has not been examined before the Court in proof thereof. The impugned judgment, therefore, suffers from the said vices and is liable to be set aside. In that view of the matter, the matter requires to be remitted to the Special Court for fresh consideration.

In the result, the Writ Petition is allowed and the impugned judgment is hereby set aside and the matter is remitted to the Special Court for fresh consideration in the light of the observations made by this Court *inter alia* in the order. The costs shall abide the result of the L.G.C. before the Special Court.

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(T.CH.SURYA RAO,J)

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(G.CHANDRAIAH,J)

Dated 18th April, 2007.

VGSR/SKMR

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.26921 OF 1999

DATED 18—04—2007

Smt.T.Saraswathi W/o T.Anjaneyulu,
Aged 41 years, Occu. Household
R/o East Marredpally, Secunderabad.
And Others ... Petitioners

v.

Special Court under the A.P. Land Grabbing
(Prohibition) Act, Hyderabad,
Rep. by its Registrar.
And Others ... Respondents